IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 1785 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE M.H.KADRI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

JAVABHAI NETABHAI MAKWANA

Versus

JANUBHAI PIRABHAI MANSURY

Appearance:

1. First Appeal No. 1785 of 2003

MR KR RAVAL for appellant No. 1

RULE SERVED BY DS for Respondent No. 1-2

MR NAGESH C SOOD for Respondent No. 3

CORAM : HON'BLE MR.JUSTICE M.H.KADRI

Date of decision: 24/03/2004

ORAL JUDGEMENT

1. The appellant (original claimant), by filing this appeal under Section 173 of the Motor Vehicles

Act,1988 ("Act" for short), has challenged the order dated June 21, 2003 passed by the Motor Accident Claims Tribunal, (Auxi.) Sabarkantha at Himatnagar on an application (Exh.5) under Section 140 of the Act in M.A.C.P. No.1613 of 2001 by which order the Tribunal rejected the application filed by the appellant for interim compensation under "No fault liability " on the ground that the F.I.R. was filed after delay of 10 days and the Jeep bearing registration No.G.A.W. 7432 was not involved in the accident.

2. Heard learned counsel for the parties. Learned counsel for the appellant Mr. K.R.Raval has drawn my attention to the reported judgment of the learned Single Judge in the case of Payalben Jayeshbhai Yagnik v. Jayeshbhai G. Yagnik & another, 2003 (3) G.L.R. page 1055 wherein it has been held that the Tribunal at the time of awarding compensation is only required to see that the accident had arisen out of the use of the motor vehicle ; the said vehicular accident had resulted in permanent disability of the person whose making claim and the claim is made against the owner and insurer of the motor vehicle involved in the accident. Having gone through the record and proceeding which were called for at the time of admission/hearing of the appeal, I am satisfied that the claimant had produced sufficient evidence to establish that he had met with a vehicular accident on September 28,2001 because of the rash and negligent driving by the driver of the Jeep bearing registration No. G.A.W.7432. The certificate produced of Niti Orthopaedic & Fracture Hospital shows that the claimant was treated for the vehicular accident injuries on September 28, 2001. The disability certificate of Dr. Nilesh. K. Acharya, dated October 28, 2002 produced along with the application had prima facie proved that the claimant had sustained permanent disability due to the injuries sustained by him in the vehicular accident. The insurance policy produced along with the application also had established that at the time of the accident the vehicle was insured with the respondent No.3-Insurance Co. Taking into consideration the evidence led by the claimant, in my view, the Tribunal committed an error in rejecting the application Exh.5, claiming interim compensation under Section 140 of the Motor Vehicles Act,1988, on the head of "no fault liability".

3. The award under Section 140 is in the nature of an interim award which is subject to adjustment against the final award, which may be passed in the main claim petition being M.A.C.P. No.1613 of 2001, pending before the Motor Accident Claims Tribunal, (Auxi.) Sabarkantha

at Himatnagar. This principle is established by the Supreme Court decision in the case of The Oriental Insurance Company Limited Vs. Hansrajbhai V. Kodala, reported in 2001(4) JT 477.

4. As a result of the foregoing discussion, the appeal deserves to be allowed. The respondents shall deposit Rs.25,000/- along with cost and interest at the rate of 9 % per annum from the date of the application till realization, in the Tribunal, on the basis of 'no fault liability' as provided under Section 140 of the Act within six weeks from today.

5. The appellant (original claimant) shall, however, file an undertaking before the Tribunal within six weeks from today to the effect that the main claim petition shall not be abandoned, shall not be withdrawn, and shall not be permitted to be dismissed for default or for any other cause, and that the claimant shall obtain a decision on merits in the said claim petition. The amount awarded under the impugned order shall be adjusted against the final award in the main claim petition.

6. On the said undertaking being filed, 30% of the amount awarded shall be permitted to be withdrawn by the appellant (original claimant) on his furnishing security to the satisfaction of the Tribunal. The rest of the amount shall be deposited in a Cumulative Fixed Deposit in any nationalised bank in the name of the Registrar of the Tribunal for a period of five years. The deposit shall be renewed from time to time till the main petition is disposed of.

7. The appeal is allowed subject to the above directions. There shall be no order as to costs.

(M.H.Kadri, J.)

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